1951 **File No.** O. Merged States 51-Part II

Legal Dept. **BRANCH** A

Subject:— Opinions regarding Merged States

(For previous papers please See Part I)

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C O N T E N T S

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Legal Department.

Merged States (Laws) Act,1950- Section 5, Baroda Government Loan Rules,1931 Rule 35.

The Bombay Government can enforce the liability of Shri Desai under the agreement and the mortgage bond (see para 5(1) of the States Merger (Governor's Provinces) Order,1949 and the Baroda Government Loan Rules,1931 continued by the Bombay Merged States (Laws) Act,1950). It would not therefore be necessary to take a fresh bond from Shri Desai under rule 296 of the Financial Rules. He may however be asked to insure his motor car with the Indian Insurance Companies Association Pool on the expiry of the period of the present policy of insurance of his motor car.

Sd/- P.M. LAD.

Additional Secretary to Government.

U.R. to R.D. through F.D.No. 7761 dated the 16th May 1951.

SNT/27.8.

Office of the R.L.A.

It appears that the inventory of the private property of some of the Rulers of Merged States especially of Deccan States Rulers includes lands falling under the description of Saranjams or Political Inams. The question raised for the consideration of the R.L.A. is whether such lands which have been recognised as the private property of a Ruler are partible and alienable. Article 3 of the Merger agreement recognises the right of a Ruler to the full ownership, use and enjoyment of all private properties (as distinct from State properties) belonging to him on the date of the agreement. Article 3 distinguishes State properties from private properties. As such it cannot be construed as creating a new tenure in favour of Rulers or conferring on them rights higher than or different from those which they had before the merger in regard to the properties recognised to be private properties. In other words whatever incidents attached to the said properties before the merger would continue to be so attached thereafter. If any property was held as an appendage to the Gadi and was by custom or usage in the Ruling family held to be impartible and inalienable the recognition of such property as being of his full ownership would not make it partible or alienable. So also if any property was joint and therefore divisible, it would not be converted into one of the absolute ownership of the Ruler. Saranjams which have been included in the inventory of private properties prepared in pursuance of ~~article~~ article 3 and recognised by the Government would not doubt be deemed to be vesting in the Rulers but would continue to be impartible or

or inalienable if they were so before the merger according to the custom or usage governing the same. If however, Rulers have held any property which was not impartible of inalienable it would be alienable or divisible among the persons who may be entitled to have share therein. The questions raised in the Ruler of Sangli's letter refer to the privy purse, palaces and Saranjam lands. In regard to the privy purse, it is obviously continuable to the person who is recognised for the time being as entitled The palaces should be recognised as appendages to the Gadi and will be held by the Ruler for the time being. As regards Saranjam lands if in accordance with the custom, usage or any rule of law governing them before the merger, they were held impartible and inalienable as other saranjams are held in the State, they would have to be so continued. Save in regard to the right of maintenance, the younger members of the Ruling family would have no claim over these lands.

Sd/- J.R.Dhurandhar.
29/5.

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 8420, dated the 29th May 1951.

SM/27.8.

Office of the R.L.A.

Clause 8 of the Trust Deed dated the 13th April 1928, provides, "In the event or after the ultimate failure or determination of the foregoing trusts concerning any share of the said trust funds etc., the trustee shall hold the said share in trust absolutely for the person who at the date of such failure or determination shall occupy the Gadi of the Gaikwads of Baroda." The dominant intention as expressed in this provision is that the share should revert to and be held in trust in favour of the occupant of the Gadi of Gaikwads of Baroda for the time being. Pratapsinh is no longer the ruler. If, however, any claim is made by him or on his behalf the question may be considered after giving notice of his claim to the ruler at present recognised.

Sd/- J.R.Dhurandhar,
2/6.

Remembrancer of Legal Affairs.

U.R. to P. & S.D.No. 8744, dated the 4th June 1951.

SMT/27.8.

In this case the Ruler of Rajpipla by his order dated the 31st December 1947 granted the house in question to Mr. & Mrs. Kothawala for the period of their lives. This grant was altered to an absolute transfer by another order dated the 12th January 1948. The house is stated to have been built sometime in 1916 for the use of young princes of the State. It was being occupied by Kothawala when he was the Private Secretary and also when he was the Dewan of the State. It is, therefore, clear that the house was being used for the purposes of the State and not as the private or personal property of the Ruler. It is true that in the Collateral letter sent by the Government of India on the 19th March 1948 it is stated that any order passed or any action taken by the Ruler will not be questioned unless the order was passed or action was taken after 1st April 1948 and was considered by the Government of India as palpably unjust or unreasonable. In this case the order was, no doubt, passed before the 1st April 1948, but after the merger policy had started in Kathiawar and Orissa. It is also true that it was the practice among Indian Rulers to make gifts of lands and houses to their officers and dependents. But the Collateral letter is a document of Political nature and its interpretation cannot be restricted to its literal terms. In fact, in regard to the amount of the pension to Mrs. Kothawala, Government has held that the pension of Rs. 400/- per month was unjustified and the amount has been reduced to Rs.300/- per month. It would not, therefore, be

unreasonable ....

unreasonable to hold that the absolute gift of the house to Mr. Kothawala a few months before the merger was unjustified and the justice and equity of the case may be fully satisfied, If she is permitted the use thereof during her life-time only.

Sd/- J.R.Dhurandhar.
6/6.

SNT/27.8.

Office of the R.L.A.

Indian States (Application of Laws) Order. 1948.
Para 5.
Claims of khatedars in Janjira State for dues on trees in Malki Numbers.

In the former Jangira State, as per order of the Ruler of that State passed in 1934 and 1947 (pp.51 and 53 ante) teak, Ain and Mango trees growing in Malki numbers known as kirdawa were treated as Royalty trees and the khatdars used to get a share of six annas in the rupee in the value of such trees when they were sold and cut. The amount so payable to the khatdars was paid to them unde the head "Forest Refund" in the former Jangira State (p.41 ante).

2. The Janjira State merged with the State of Bombay on the 6th May 1948. It has been noticed that several claims for such refund have remained unsatisfied on the date of the merger of the Jangira State. The Chief Conservator of Forests, Bombay in his letter at p. 1 ante states that there are 90 such claims and the total amount of such claims comes to 2 to 2½ lakhs of rupees approximately.

3. The A. & F.D. by its note at pp. 57-58 ante has referred the matter to the R.L.A. for advice as to whether it is incumbent on the Government of Bombay to consider the claims which not only relate to the premerger period but are as old as 25 years or more.

4. On the merger of the Janjira State with the State of Bombay the administration of that State was taken over by the Government of Bombay on 6-5-1948 by the Administration of Jangira State Order, 1948, issued under section 4 of the Extra-Provincial Jurisdiction Act, 1947. As regards the application and continuance of laws in that State, paragraph 4 of that Order provided as under :-

> "Such provisions or such parts of provision of any law of of any notification, order, scheme, rule, form or by-law issued, made or prescribed under any law, as were in force immediately before the 6th May 1948 in the Janjira State shall continue in force until

altered ....

altered, repealed or amended by an Order under the Extra-Provincial Jurisdiction Act, 1947."

The Government of Bombay thereafter issued on 28-7-1948 the Indian States (Application of Laws) order, 1948 which was applicable amongst other State to Janjara. Under that Order several Central and Bombay Acts were extended to the Janjira State with the effect that all the corresponding enactments in force in that State stood repealed with effect from 28-7-1948. The Acts so extended to the Janjira State include the Indian Forest Act, 1927 and the Bombay Land Revenue Code, 1879. Although the Indian States (Application of Laws) Order, 1948, provided for the repeal of corresponding enactments of the Janjira State, the following provision was made in paragraph 5 of that Order with regard to past Acts and the rights obligations, liabilities already acquired, accrued or incurred prior to the merger of the State:-

"Provided that the repeal by this Order, of any such enactments shall not affect the validity, invalidity, effect or consequence of anything already done or suffered or any right, title, obligation or liability already acquired, accrued or incurred or any remedy or proceeding in respect thereof or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand or any indemnity already granted or proof of any past act or thing."

Under the States Merger (Governor's Provinces) Order, 1949, all orders issued under the Extra-Provincial Jurisdiction Act, 1947, have been saved and kept in force. (See article 4 of that Order).

5. Prior to the merger of the Janjira State, the khatdars in that State enjoyed six annas share in the value of the Royalty trees which consisted of teak, Ain and Mango trees under orders of the Ruler of that State passed in 1934 and 1947. It has to be presumed that the said orders of the Ruler of Janjira State were themselves an enactment ....

an enactment governing Royalty trees in that State, On the extention of the Bombay Land Revenue Code, 1879, (which is a corresponding law - section 40 of the Act) to the Janjira State, the said orders have to be deemed as repealed by cirtue of the provisions of paragraph 5 of the Indian States (Application of Laws) Order, 1948, but according to the proviso to that paragraph as quoted above, the right already acquired by the khatdars under the said orders, and the obligation incurred by the Janjira State in respect of that right till the date on which the Bombay Land Revenue Code was extended to the Janjira State, remains unaffacted. It appears, therefore, that the claims in question will have to be considered and satisfied in view of the first proviso to paragraph 5 of the Indian States (Application of Laws) Order, 1948. The claims, even if they may be old, would not be time-barred unless they had been refused by the Janjira State. Presumably the Civil Procedure Code in force did not provide for the institution of suit against the State. But this point will have to be verified. From the papers it appears that the claims were pending with the Government of Janjira.

Sd/- J.R.Dhurandhar.
4/6.

Remembrancer of Legal Affairs.

U.R. to A. & F.D.No. 8811 , dated the 5th June 1951.

SNT/28.8.

Legal Department.

It appears from the letter dated the 26th August 1948 of the Home Department of the ex-Kolhapur State that Dr. Dhanawade was asked to show cause and the doctor gave his explanation on the 27th August 1948. It is not clear whether the order passed by the Administrator, Kolhapur State, was passed by him after taking into consideration the ~~explanation~~ explanation submitted by the doctor. This may be verified by a reference to the Collector of Kolhapur, who may be requested to forward a true copy of the orders referred to above and all the facts leading to the passing of the order, and to state whether the order was passed in accordance with the service rules in the State.

Sd/- R.T.Katarki.

for Additional Secretary to Government.

U.R. to P. & S.D., No. 6594, dated the 25th April 1951.

SNT/28.8.

Offiod of the R.L.A.

Attention is invited to the Administrator's note dated 16th October 1948 (at pp. 7-8 of file 1). This note was recorded after the submission of the explanation by Dr. Dhanavade on 27th August 1948 and on the receipt ofthe Inspector General of Police's report. In the penultimate para of that note the Administrator has given a direction that Dr. Dhanawade's "pension payment should be stopped permanently". He gave a direction that a confidential order might be issued to the Accountant General accordingly and Dr. Dhanavade might also be informed of the substance. The word "permanently" also suggests that after taking into consideration the material before him including the explanation offered by Dr. Dhanavade, the Administrator confirmed his first order dated 24th August 1948 stopping the pension pending further orders.

The Collector reports that no pension rules were in force in the Kolhapur State. But pension is in the nature of a bounty and the Kolhapur State Government had power to withdraw it if the Government servant was engaged in subversive and anti Government activities. Consequently the fact that there were no pension rules wouldnot make the Administrator's order invalid.

The above circumstances coupled with the fact that the police reports are against Dr. Dhanavade would justify the decision of Government not to interfere with the Administrator's order.

Sd/-. J.R.Dhurandhar.
16/6,

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 9596 , dated the 18th June 1951.

SNT/88.8.

Office of the H.L.A.

The Bombay Merged States (Laws) Act, 1950 does not apply to the area of Abu Road and Abu Tehsils of the former Sirohi State. Section 2 of the Bombay Merged States (Laws) Act, 1950 states that the expression "Merged States" has the same meaning as in the States Merger (Governor's Provinces) Order, 1949. The area of Abu Road and Rilwar Tehsils of the Sirohi State were not specified in that Order but have been specified in the State Merger (Bombay) Order, 1950. The view taken by the District Magistrate, Banaskantha, is correct.

Sd/- J.R.Dhurandhar.
13/6.

Remembrancer of Legal Affairs.

U.R. to H.D., No. 9414, dated the 14th June 1951.

SNT/28.8..

OFFICE OF THE R.L.A.

As the two properties in question were disposed of by the late Maharaja of Rajpipla so far back as in 1936, and as these properties were recognised by the merger agreement as private properties and of full ownership of the late Maharaja of Rajpipla and as these properties, not being situated at the capital of the State, it would be difficult to hold that their disposal under the deed of settlement was not legal. It would however be open to the present Ruler to dispute the deed of settlement, if he is so advised.

Sd/- J.R.Dhuramdhar.
28/6

Remembrancer of Legal Affairs.

U.R. to P. & S.D.No. 10336, dated the
29th June 1951.

SNT/28.8.

L.D.R.I. No.145 dt. 4-1-1951.

Submitted.

Please see letter from the Collector of Ahmedabad and R.D. note at cc. 1 to 3 ante regarding removal of Japti management over survey No. 6 of Dehgam held by Shri Gordhanbhai Meghabhai but taken under Japti management for one year by the Vahivatdar of Dehgam Mahal on 18-11-1948 as it was sold by Shri Umedbhai Hathibhai, a non-occupant to the Vahivatdar of Dasha Nagar Vanik Boarding. The collector has raised the point whether the Baroda State Ordinance No. 3 dated 16-7-1912, Order No. 301-86 dated 31-8-1929 issued by the Survey Settlement superintendent and Order No. 2 dated 31-12-1937 passed by the Barkhali Adhikari are still in force. R.D. is of the view that these orders which provide for taking over the management in the event of unauthorised alienations have restricted scope in the case of Barkhali lands only whereas the scheme of the Court of Wards Act are altogether different and wider. That Department is of the views that these lands continue to be in force as long as the inam land as it is in force in Bombay State is not made applicable to the Baroda State. The P. & S.D. and L.D. is requested to confirm this view.

2. 'Sadnyan Vay Ane Palyapalak Nibandha' of the Baroda State has been repealed by para 5 of the Baroda State (Application of Laws) Order, 1949 and the Bombay Court of Wards Act, 1905 which corresponds that Act is made applicable to the State by the said Order. Ordinance No. 3 of 1912 and the orders of the Baroda State referred to by the Collector of Ahmedabad, in his last letter ; dated 31-10-1950, cannot therefore be said to have been repealed by the application of the Court of Wards Act, 1905. It is true that Bombay Regulation V of

V of 1827 provides for administration and for the appointment of administrators and managers of property by Courts. But it is not clear in the absence of the copy of the Ordinance of 1912 amd copies of orders of the Baroda State whether they can be deemed to be repealed and replaced by the Bombay Regulations R.D. may therefore be requested to obtain from the Collector copies of the Ordinance and the orders referred to.

Sd/- P.S.Nadkarni.
3/2.

A.L.R. Sd/- R.T.Katarki.
3/2

Office of the R.L.A.

The Bombay Court of Wards Act is not an enactment corresponding to the Baroda Barkhali Ordinances and therefore the said Ordinances are still in force and can be followed.

Sd/- J.R.Dhuramdhar.
2/7.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 10523, dated the 3rd July 1951.

SNT/28.8.

Office of the R.L.A.

It appears from paragraph 2 of P. & S.Deptt. note at p.13 ante that the persons mentioned in these papers are ex-State servants who had retired prior to the merger. If so, the pensions payable to them are being paid under Article VIII of the Baroda Merger Agreement. These pensions would be in the nature of political pensions would not be governed by the B.C.S.Rs. It is for Government to decide whether their activities are of such nature as would amount to misconduct justifying the stoppage of their pensions. No suit can lie against Government for the recovery of their pensions without a certificate from the Collector under section 4 of the Pensions Act, 1871. (See Sarat Chandra Das v. Secretary of State, I.L.R. 33 Cal. 378).

Sd/- J.R.Dhurandhar.
12/7.

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 680-Confl. dated 12th July 1951.

SNT/28.8.

Office of the R.L.A.

The view taken by the Political and Services Department is correct. Dr. Uplap can have no valid claim against the Bombay Government for the termination of his services for misconduct by the Jambughoda State before its integration with the Bombay State, without paying him 3 months' salary.

Sd/- J.R.Dhurandhar.
10/7

Remembrancer of Legal Affairs.

U.R. to P. & S.D.,No. 10942 , dated the 11th July 1951.

SNT/28.8.

Office of the R.L.A.

The Government of Bombay has not specifically abolished any Court in the Sirohi Government. But in the opinion of the R. L. A. by the operation of the State's Merger (Bombay) Order, 1950 the High Court of Sirohi States and the District Court in the State have ceased to exist. By virtue of the powers given to the Government of Bombay by paragraph 4 of the said Order, the Government of Bombay has subsequently constituted a District Court and a Court of the Civil Judge (Junior Division) at Abu Road under the Political and Services Department, Notifications No. 2751/46 G-II and No. 2751/46-G-III, dated the 8th February 1950. respectively, which by implication abolish the former corresponding Courts in that part of the Sirohi State which has been merged in the State of Bombay. The copies of the latter two Notifications may be supplied to the Government of India by the Home Department.

Sd/- J.R.Dhurandhar.
17/7

Remembrancer of Legal Affairs.

U.R. to H.D., No. 11398, dated the 18th July 1951.

Office of the R.L.A.

Supply of Free Grass to Balasinor Goushala.

It appears the Goushala at Balasinor was started in 1914, out of funds contributed by the people of Baladinor and has been maintained out of donations and other aid received from the public. The Balasinor State had granted a free site and had also sanctioned a grant of 25000 bundles of grass (400 maunds) every year to the Goushala. (vide State order No. 12 dated 20th January 1921). After the merger of the Balasinor State with Bombay, the Collector of Kaira has under his order dated 18th April 1949 discontinued the free supply of grass to the Goushala. It appears that in reply to the Council question No. 946, dated 24th May 1950 tabled by Shri O.C.Modi, M.L.C, the Honourable the Chief Minister is reported to have stated that Government would consider on merits the proposal for the continuation of the free grant of grass to the Balasinor Gaushala if the matter was represented to it by the Trustees of the Gaushala. It has accordingly now been represented to Government and the question is raised whether Government is legally bound to supply the grass free of cost to the Gaushala; in other words whether Government is bound by the order of the Balasinor State dated 20th January 1921 sanctioning the free supply of grass.

2. The order of the Balasinor State No. 12, dated the 20th January 1921 is an executive order of the State and the grant of 25000 bundles of grass free of cost every year to the Balasinor Gaushala contained therein is a voluntary and gratuitous contribution or grant-in-aid by the State to the Gaushala. As such it has no legal binding effect. Besides, this Government as successor Government is not bound by liabilities voluntarily incurred by its

its predecessor Government unless it has by its intention express or implied agreed to be bound by them.

Sd/- J.R.Dhurandhar.
17/7

Remembrancer of Legal Affairs.

U.R. to A. & F.D.No. 11374 dated, 18th July 1951.

ONI/20.0.

OFFICE OF THE R.L.A.

Rules for licensing and Controlling Theatres etc.

Bombay District Police Act, 1890, and Bombay Merged States (Laws) Act, 1950 sec.3(3)(b).

The view taken by D.S., H.D. is correct. The Bombay District Police Act, 1890, has been included in first Schedule to the Bombay Merged States (Laws) Act, 1950 and under sub-section (3) (b) of section 3 there of it is provided that if any appointment, delegation, notification, order, by-law, rule or regulation, has been made, issued or prescribed in respect of any specified local area, it shall be deemed to extend to and be in force also in any area of the merged States, which has been included in such local afea undesr any law for the time being in force. The Rules, therefore, would automatically come into force in the merged areas and no fresh notification would be necessary.

Sd/- J.R.Dhurandhar.
9/7.

Remembrancer of Legal Affairs.

U.R. to H.D.No. 10854, dated the 10th July 1951.

SNT/28.8.

Office of the R.L.A.

There is no question of granting the property to the Kothavala family in the present case. The question is as to what extent the grant already made by the Ruler of Rajpipla should be recognised by this Government. In his last opinion dated 6-6-1951, the R.L.A. advised that it would not be unreasonable to hold that the absolute gift of the house to Mrs. Kothavala a few months before the merger was unjustified and the justice and equity of the case might be fully satisfied if she were permitted the use thereof during her lifetime only. If Government wants to recognise the grant subject to the condition that the property could be heritable but not transferable save with the sanction of Government, there would be no legal objection to attach a condition to that effect to the Government Order recognising the claim of the Kothavala family to the property granted to it by the Ruler of Rajpipla, for such a condition would be within the scope of the sovereign authority of the State and the Kothavala family would be entitled to hold the property subject to the condition thus attached by Government. (See Secretary of State v. Bai Raibai, 41 I.A. 229).

Sd/- J.R.Dhurandhar,
25/7.

Remembrancer of Legal Affairs.

U.R. to P. & S.D.No. 11861 , dated the 25th July 1951.

SNT/28.8.

The first question raised for consideration is whether resort to section 175 of the Indian Penal Code or to any other provision of law can be had to compel the Taluqdars and Thandars who have signed agreements in the Form at pages 9-11 ante to part with the pre-merger records of the Estates. The R.L.A. in his opinion No.843-Confl., dated 25th November 1950 (p. 107 ante) had expressed the view that such records cannot be considered to be the private property of the Rulers. The Government of India, Ministry of States, to whom this opinion was communicated has, while agreeing therewith, suggested that resort should be had to the Land Revenue Code or other laws enabling the State Government to recover State records from persons in whose unauthorised possession they may be. For the reasons stated in para. 4 of their office note the R.D. does not consider it feasible to have recourse to the provisions of the Bombay Land Revenue Code. Section 175 of the Indian Penal Code prescribes penalty for a person who is legally bound to produce or deliver up any document to any public servant failing to do so. For an offence under that section there must be a liability imposed by law to deliver up documents. In this case the question of the Taluqdars etc. delivering up the records in their possession has arisen because of the merger of their Thanas and the execution by them of agreements in the Form at pages 9-11 ante, and they do not provide that the taluqdars are bound to produce the records before any public servant. These agreements being of a political nature they cannot, therefore, be relied upon so as to make the Taluqdars legally bound to deliver to Government the estate records so as to make them liable under section 175 of the Indian Penal Code. It is seen, moreover, from clause (f) of the agreement that the personal dignity of the Taluqdars is maintained and presumably no prosecution can lie without the sanction of the

of the Government of India. For these reasons it does not appear action under section 175 of the Indian Penal Code would be feasible. A civil suit may lie against the taluqdars to recover the documents which are the property of Government. But for this purpose the consent of the Central Government will be necessary (vide section 86(1) of the Civil Procedure Code read with section 87B).

2. The next question is whether it is necessary to re-consider R.L.A's opinion No.14355, dated 12th October 1950. In that opinion the R.L.A. had expressed the view that the land revenue records of the Taluqdars and Thandars of the former Gujarat States were not the papers or property of Government. The question raised in that file was whether sections 25 and 26 of the Bombay Land Revenue Code could [redacted] be resorted to for getting hold of the records; and the records in question were not considered to be "papers" in possession of revenue officers or persons formerly employed as revenue officers within the meaning of section 25. That opinion therefore does not need any modification.

3. The last question is what steps could be taken to prevent the Taluqdars etc. from destroying or altering the records. As pointed out above a civil suit can be filed. At the same time the Taluqdars can be informed that they will be criminally liable if they damaged in any way the documents which are the property of Government. But as stated in para. 1 above the questions having arisen on account of political relations, the better remedy will be to bring political pressure with the aid of the Government of India. The course suggested by the Secretary, R.D. in his note dated 2nd July 1951 may, therefore, be followed.

Sd/- J.R.Dhurandhar.
31/7.
Remembrancer of Legal Affairs.

SNT/28.8. U.R. to R.D.No. 12240 , dated the 31st July 1951.

No. 16633 dt/10-8-51.

Submitted with reference to P. & S.D. note at pp. 15-16 ante. Thakore Shri Chhatrasinhji of Bhilodia estate died on 18th Oct. 1950. The Govt. of Indian who were informed of this have expressed the view (vide their letter at p. 7 ante) that as the Thakore had signed a Zamindari agreement in Form III, no recognition of the President is necy. for succession to that Estate though Govt., in view of the guarantee given in the merger afreement, is interested in seeing that succession is regulated by law and custom. The deceased Thakore has left as his heir his only son Shri Jashwantsingji. The P. & S.D. proposed that the only action required to be taken is to enter the name of Shri Jashwantsinhji in the record of rights just as in the case of Jahagirdars. This Deptt.is requested to state whether the action proposed is correct and also to state what procedure should be followed in such cases.

2. The action proposed at 'A' in the P & S.D. note appears to be correct, and the P & S.D. may instruct the Collr. of Baroda accordingly. This Deptt. is not however in a position to state what other procedure the P & S.D. should follow in such cases.

Sd/-

D.S.

Sd/- R.T.Katarki.
14/8

R.L.A. Sd/- J.R.Dhurandhar.
14/8

U.R. to P. & S.D.No. 13349, dt. 21-8-51.

SNT/28.8.

Office of the R.L.A.

It appears that by its letter No. 4294-J, dated the 6th January 1950 Government directed that the recovery of the local forest cess in Baroda State should be discontinued with immediate effect and the amounts already recovered even after 1st August 1949 till the date of its discontinuance need not be refunded. The question now raised for the R.L.A's consideration is whether the amounts due in respect of the said cess for the period between 1st August 1949 and 6th January 1950, which have not been collected, should be recovered.

It appears that the local forest cess in Baroda State was discontinued by Government as the levy of such cess was not relatable to any statutory provision after the Baroda State merged in the Bombay State. If so, the arrears ofthe said cess due for the period from 1st August 1949, i.e. after the merger of the Baroda State, to 6th January 1950 cannot be recovered as the levy has no legal sanction.

Sd/- J.R.Dhurandhar.
10/8

Remembrancer of Legal Affairs.

U.R. to F.D. No. 13009 , dated the

13th August 1951.

SNT/30.8.

OFFICE OF THE R.L.A.

In Jamshedji v. Secretary of State (28 Bom. L.R. 25) the Privy Council held that it was not permissible to refer to the previous correspondence between the parties for the purpose of construing the grant. In Barabond Coal Concern Ltd. v. Shree Gopinath Jiu (36 Bom. L.R. 390) the Privy Council also held that WHERE THE words in a deed are clear and unambiguous, the subsequent conduct of the parties is an irrelevant consideration and cannot be relied upon to control the stipulation in the deed and as evidence of an agreement between the parties to vary its terms. Applying these principles to the present case, it appears that the letter of the Thakore Saheb written on 5th May 1932 to the District Deputy Political Agent, requesting him to grant the land on a condition that the bidders should inhabit a village in Hapa Taluka and the bidders were given to understand that they should settle in the limits of that taluka cannot be taken into account while construing the agreement executed by the successful bidders. It would not also be possible in construing the terms of the agreement to take into account the subsequent conduct of the parties, viz., the admission of these bidders that their residence within the Hapa Taluka was one of the conditions subject to which the lands were granted and that the Thakore did intend to resume the lands for the breach of that condition since 1943. It is undisputed that the agreement executed by these bidders does not contain any condition that they should reside within the limits of Hapa Taluka. If so, it was not legally competent for the Thakore to resume the land for the breach of a condition which was not embodies in the agreement but which was probably intended by the parties. In the circumstances, the order of resumption passed by the Thakore is not lawful and it may be set aside by Government. If the order of resumption is set a aside, the present occupants of the land will continue and the occupancy price paid by the heir apparent will have to be refunded to him.

Sd/- J.R.Dhurandhar 10/8.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 12954 , dated the 11th August 1951.

SNT/30,8.

Fixation of pay of M/s. Acharya and Baxi.

R.L.A's opinion No. 419-Confl. dated 12-6-1950.

Article 8 of the agreement between the Governor General of India and the Maharaja of Baroda is to the effect that the Government of India gaurantees either of the continuance in service of permanent members of the public services of Baroda on conditions which will be not less advantageous than those on which the administration of Baroda is made over to the Government of India or the payment of reasonable compensation. This provision was considered by the R.L.A. in his opinion No. 419-Confl., dated 12th June 1950 as follows: "In considering whether the conditions are less advantageous or not, regard must necessarily be had to the totality of conditions. We must take account of all conditions including pay, promotions, prospects, etc. Each case will have to be decided on its own special facts having regard to the various conditions involved therein and no hard and fast rule can be formulated." Applying the same test to the facts in the two cases in question, it is true that both Shri Acharya and Baxi, who were working as Shirastedars in Baroda State in the scale of Rs. 150-20/2-300 under the Baroda Government have been absorbed in the Bombay Government service as Junior Assistants in the A. & F.D. in the scale of Rs.120-10-200 E.B. -10-250, with the result that the Bombay Government pay scale is less than the Baroda State pay scale both in respect of the minimum and the maximum. But the minimum scale of pay is not of much consequence as both of these servants have been absorbed in the Bombay State service on the same pay which they were drawing in the Baroda State at the time

of merger, The maximum pay scale of the Bombay State service in which they have been absorbed is no doubt less than the maximum pay scale admissible to them in the Baroda State service. But, as stated by the R.L.A. in the aforesaid opinion, regard must necessarily be had to the totality of conditions while considering whether the conditions of service are less advantageous or not. The present pay, it appears, of Shri Acharya is Rs. 210 while that of Shri Baxi is Rs.190. As Junior Assistants they have been absorbed in the A. & F.D. and they would be reaching the maximum of the scale i.e. Rs.250 in the course of the next 4 and 6 years respectively. It appears that Shri Acharya is 45 years old while Shri Baxi is about 40 years old. Considering the age as well as the present pay they are drawing, presumably both of them have prospects of being promoted as Senior Assistants, in which case, they would be in a higher scale of pay. Considering all these circumstances, it appears, therefore, that absorption as Junior Assistants cannot be considered as less advantageous and the view taken by the P & S.D. appears to be correct. The case of Major Soman considered by the R.L.A. earlier is distinguishable.

Sd/- P.M.LAD.

Additional Secretary to Government.

U.R. to A.&F.D. No. 13353 , dated the 21st August 1951.

SNT/30.8.

Office of the R.L.A.

The Tharad Jahagir was a semi jurisdictional State. If the Court of Nyayadhish was abolished, the Collector will have no jurisdiction. The appeal must abate and the parties may be referred to the Civil Court.

Sd/- J.R.Dhurandhar.
29/8.

Remembrancer of Legal Affairs.

U.R. to R.D.No. 13996 , dated the 31st August 1951.

SNT/30.8.

R.I.No. 15277
23.7.51

The facts stated by the Collector of Poona, in his letter No. WB/STB/429/51 dated 20.6.1951 * are these:-

* p. 1 ante.

The unsurveyed village of Mugaon in the Bhor State was held as Inam by the Pasalkar family. As the Dumaldars made default in payment of Judi due to the State amounting to Rs. 313-4-8, under the orders of the Dewan of the Bhor State dated 26.10.1936, the said village was attached under section 159 of the Land Revenue Code. It was then given for management to Shri M.B.Deshpande who was the Kulkarni of the adjacent village and was allowed a remuneration of Rs. 25/- per annum to be paid from the revenue of the village in question. It is stated that the Manager so appointed recovered only the dues due to Government and the amount payable to other Hakkadars, while the amount of land revenue payable to the Inamdars was adjusted towards the land revenue assessment payable by the Inamdars in respect of their own lands. The demand of the village is Rs. 723-10-9 out of which an amount of Rs. 288-14-6 inclusive of local fund cess is payable to Government, Rs. 287-11-0 are payable to the Inamdars and the balance to the Hakkadars.

Slip B in file.

On the merger of the Bhor State into Poona District, the village of Mugaon is included in the Mulshi taluka of Poona District. The Collector of Poona states that since no application has been made by the Inamdars within 12 years from the date of attachment for releasing the village from attachment and restoring possession of the same to the Inamdars under section 162 of the Bombay Land Revenue Code, the village may be deemed to have vested in Government under section 163 and may be treated as khalsa. The R.D. concurs in the view taken by the Collector and

holds that the village can be held to have vested in Government from 1.8.1949 and the Inamdars will have to be treated as mere occupants of the lands which they actually held liable to pay full assessment. It further holds that the declaration that the village has vested in Government will not in any way affect or prejudice the rights of the persons in actual possession of the lands, and they will be continued as occupants liable to pay full assessment to Government. R.L.A. is requested to confirm the R.D. view.

Legal Department.

Seen and returned.

The view taken by the Revenue Department is correct.

Sd/- B.D.M.
Additional Secretary to Government.

U.R. to R.D., No. 14391, dated the 10th September 1951.

Office of the R.L.A.

The question for R.L.A's consideration is whether the monopoly to quarry stones in the estate of Gothda in the Rewa Kantha Agency granted to one Patel by the Political Agent, Rewa Kantha, Surgana and the Dangs is binding on this Government. The answer to the question is in the negative.

Lee Warner in his Native States of India states at page 358 that the jurisdiction which the Governor-General in Council exercises through his delegates the Political agents, is the Native state's, or foreign, jurisdiction. This exercise by the Governor General of foreign jurisdiction through the Political Agents is further supported by the Extradition and Foreign Jurisdiction Act, XXI of 1879, which recited the following authority; "Whereas by treaty, capitulation, agreement, grant, usage, sufferance, and other lawful means, the Governor-General of India in Council has power and jurisdiction within divers places beyond the limits of British India." The extra-territorial jurisdiction of the Governor-General in Council as previously exercised was confirmed and for the future placed on a wider and firmer basis by the comprehensive terms of the preamble of the India (Foreign Jurisdiction) Order in Council 1902 which runs as follows:- " Whereas by treaty grant, usage, sufferance, and other lawful means His Majesty the King has powers and jurisdiction, exercised on His behalf by the Governor-General of India in Council in India, and in certain territories adjacent thereto." It will be seen from Volume VII of the British Enactments in force in Indian States that various enactments were made applicable to the Rewa Kantha Agency in exercise of the powers conferred by the Indian (Foreign Jurisdiction) Order in Council 1902. When the Indian Independence Act, 1947 was passed, by virtue of section 7 of that Act, the suzerainty of His Majesty over the Indian States lapsed, and with it lapsed all treaties and agreements in force at the date of

the passing of this Act between His Majesty and the rulers of Indian States, all functions exercisable by His Majesty at that date with respect to Indian States all obligations of His Majesty existing at that date towards Indian States or the rulers thereof, and all powers, fights, authority or jurisdiction exercisable by His Majesty at that date in or in relation to Indian States by treaty, grant, usage, sufferance or otherwise. The position stated above will ~~kxxxx~~ show that the jurisdiction which the British Government exercised over the Indian States through their Political Agents was entirely a foreign jurisdiction and by virtue of the Indian Independence Act, 1947 that jurisdiction lapsed. Therefore, whatever rights or obligations were created by the Political Agents with respect to, or on behalf of, Indian States could not after the passing of the Indian Independence Act, 1947 bind the successor Government. Whatever rights therefore, the inhabitants of the States enjoyed against the former rulers or the Political Agents within the State cannot be enforced by action against the successor Government. See R.L.A's opinion No. 1054 dated 16th September 1949. This view is also supported by the decision of the Privy Council in the case of Vajesingji Joravarsingji vs. the Secretary of State for India in Council, 51 Indian Appeals, 357. See also Sayed Asrar Ahmed versus Durgah Committee of Ajmer, 49 Bom. L.R. 235 P.C.

Sd/- J.R.Dhurandhar.
31.8
Remembrancer of Legal Affairs.

U.R. to R.D. No. 14141 dated the 4.9.1951.

Office of the R.L.A.

It appears that Messrs. Bhivandiwala and Co. of Bombay were given an excise Licence by the Kolhapur State to manufacture and supply country spirit is to retain venders for a period from 1-4-45 to 31-3-1955 under the provisions of Bombay Abkari Act as in force in the Kolhapur State. When Kolhapur State was integrated with effect from 1-3-1949, the Contractors were asked on 9th March 1949 to take out a licence under the Bombay Abkari Act. It appears that the contractors ~~xix~~ stopped distillation on 31st March 1949 and enquired on 9th April 1949 as to from which authority they should take out a licence. As the Bombay Abkari Act, 1879, had already come into force in the Kolhapur State integrated with the Bombay State and as on its repeal the Bombay Prohibition Act, 1949, came into force with effect from 16-6-1949, the contractors were informed that the licence for manufacture of country spirit can be granted upto 31st March 1950 on their agreeing to pay a proportionate licence fee. As they did not apply for a licence the stock of liquor lying with them was taken by Government on 16th July 1949. They were asked to give vacant possession of the Government distillery premises. A written notice was given on 20-6-50 to them to remove their plant and machinery and vacate the building within one month from the receipt thereof. Messrs. Gagrat & Co., the Solicitors to the contractors have requested the Government to cancel the notice and they have raised the contentions that-

(1) the licence has not been suspended or cancelled;

(2) the plant and machinery has not been taken over by the Government according to the provisions of the agreement; and

(3) the contractors are the tenants of the premises and as such Government is not entitled to ask them to vacate.

R.L.A. is requested to advise whether any of the aforesaid contentions are valid.

2. In Mugler vs. the State of Kansas, 123 U.S. 205, it was held that the prohibition simply upon the use of property, for purposes that are declared, by valid legislation, to be injurious to the health, morals or safety of the community cannot in any just sense be deemed to be taking or appropriation of property for public benefit. The State cannot be restrained from providing for the discontinuance of any manufacture or traffic which is injurious to the public morals by any incidental inconvenience which individuals or corporation may suffer. Justice Harlan who delivered the opinion of the Court has quoted the following passage from 115 U.S. 650:

> "The constitutional prohibition upon State laws impairing the obligation of contracts does not restrict the power of the State to protect the public health, the public morals, or the public safety, as the one or the other may be involved in the execution of such contracts. Rights and privileges arising from contract with a State are subject to regulations for the protection of the public health, the public morals, and the public safety in the same sense and to the same extent as are all contracts and all properties, whether owned by natural persons or corporations."

The decision in the case of Mugler vs. The State of Kansas has been affirmed in the subsequent American case, "Sig. Samuel vs. J.A. McCurdy," 267 U.S. 188. The Bombay Prohibition Act has prohibited the manufacture of liquor as well as the construction or working of any distillery or brewery except under a licence. In view of the American cases cited above the Bombay Prohibition Act will over-ride the licence or agreement entered into by the Kolhapur Darbar with Messrs. Bhiwandiwalla & Co. and the licensees will not be entitled to any compensation either for cancellation of their licence by virtue of the coming into force of the Bombay Prohibition Act, 1949, or for any plant or machinery of theirs rendered useless by the operation of the Act.

3. A further argument why the licensees will not be entitled to any relief can be based upon the Privy

Council decisions in the Secretary of State for India in Council vs. Bai Rajbai, 42 Indian Appeals p. 229, and Vajesingji Joravarwingji vs. the Secretary of State for India in Council, 51 Indian Appeals 357. As pointed out by the R.L.A. in his Opinion No. 434 Confl. dated 14.7.49 it is a well established rule of law for which reference may be made to the above Privy Council decisions that the rights which the inhabitants of a State enjoyed against its former Ruler avail them nothing against the successor Government and could not be asserted in the Courts established by that Government except so far as they had been recognized by the new sovereign power. Recognition may be by legislation or by agreement express or implied.

4. It would be therefore, legally feasible to repudiate the agreement entered into by Messrs. Bhiwandiwalla & Co., with the Kolhapur Darbar, if public interest so demands, and no action for such repudiation will lie against Government.

Sd/- J.R.Dhurandhar.
7.9
Remembrancer of Legal Affairs.

U.O. R. to R.D. under No. 14414, dt. 10.4.51.

Office of the R.L.A.

The Bombay Hereditary Offices Act, 1874 has not been extended to the merged territory and Government has not yet decided as to how the Watans in the merged territory should betreated . But in this case the Collector has presumably after the merger purposted to act under a provision similar to that contained in section 9 of the Bombay Hereditary Offices Act, 1874 and levied rent from some of the land to be paid to the watandar. Although there were alienations, the lands were treated a part of the watan property. It would not be correct to deal with the lands under the provisions of the Bombay Hereditary Offices Act, which has not been applied to the merged States. The orders passed by the Collector, which are confirmed by the Commissioner need not be interfered for the present until Government arrives at a decision in regard to such lands in the merged States.

Sd/- J.R.Dhurandhar
18/9

o.c.

Remembrancer of Legal Affairs.

O.R. to R.D. No. 149/13, dated the 19th September 1951.

Mjr/30/8/
4 Cs.

Office of the R.L.A.

The Hyderabad Companies Act No. IV of 1320 F was a law correppnding to the Indian Companies Act, 1913, and the Hyderbad State Bank was incorporated under a special law known as the Hyderabad State Bank Act (No.XIX of 1350F) and not under the Hyderbad Companies Act. Consequently the Hyderbad State Bank Act is not a law corresponding to the Indian Companies Act within the meaning of section 2B of that Act inserted by the Part B States (Laws) Act, 1951 ; and would appear t be still in force. But the Registrar of Companies should verify this point from the Government of Hyderbad itself.

Sd/- P.M. Lad
o.c.
for Remembrancer of Legal Affairs.

U.R. to F.D. No. 14294, dated the 7th September 1951.

Mjr/30/8/
4 Cs.

Office of the R.L.A.

Under the agreement executed by Dr. Ratilal Shailal Shah he has bound himself to serve the Balasinor State for a further period of 10 years at a revised grade which the Balasinor Darbar may sympathetically consider on his return to duty. This agreement contains no provision that Dr. Shah would be entitled to serve only at Balasinor and not elsewhere in the Balasinor State. It would, therefore, follow that Dr. Shah was liable to be called upon to serve anywhere in the State of Balasinor. After the merger of that State in the Bombay State, Dr. Shah began to serve the Bombay State with the result that he became laible to be transferred to any place in the Bombay State. If he refuses to serve in any other place to which he may be transferred, he would be liable to be dealt with by the Bombay State under the Bombay Civil Services Conduct, Discipline and Appeal Rules and dismissed from service. Such dismissal would not absolve him from the liability to pay the balance of the loan and passage money as provided in the agreement executed by him in favour of the Balasinor State.

Sd/- J.R.Dhurandhar

24/9/

O.C.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 15322/, dated the 25th September 1951.

Mjr/30/8/

4 Cs.

Office of the R.L.A.

The amount due from Shri Gaikwar cannot be recovered unless and until the injunction order of the Civil Court is vacated. The balance due from Shri Sudhalkar and Dr. Chandrachud cannot be recovered as arrears of land revenue (see R.L.A's opinion No. 377 (confl.) dated the 23rd June 1949).

Sd/- J.R.Dhurandhar

o.c. 10/10

Remembrancerof Legal Affairs.

U.R. to P. & S.D. No. 16123, dated the 10th October 1951

Mjr/30/8/

4 Cs.

Office of the R.L.A.

No further information appears necessary to determine the legal liability of this Government to implement the commitments of the Baroda Government.

2. It is true that by H.Q. No.31/6 dated 19th January 1948 "the Baroda Government decided bo bear the cost of siding which would be provided by the B.B. & C.I. Railway and its maintenance in the proposed Industrial area, until the area was fully developed and when ~~xxxxx~~ prorata fees might be charged from the Industrialists" and by Government Order No.(R) 54-37 dated 27th April 1949, the Baroda Government reaffirmed those commitments on the strength of which two industrialists had already put up industries in the area. But these commitments could not be binding on the Bombay State Government as that Government has not either by agreement expressed or implied or by legislation consented to implement those commitments. (see Secretary of State Vs. Bai Rajbai, 17 Bom L.R. 730). Moreover "railways" is a Central subject (vide item 22 in the List I of the 7th Schedule to the Constitution). Under para 7 sub-para(1) of the States Merger (Governor's Provinces) Order, 1949, all liabilities in respect of such loans, guarantees and other financial obligations of the Dominion Government as arise out of the goverance of a merged State including in particular the liability for the payment of any sums to the Rulers of the merged States etc. shall as from the appointed day, be liabilities of the absorbing Province, unless the loan, guarantee or other financial obligationis relatable to the Central purposes-

To provide a railway siding at the cost of Government would, it appears, be relatable to the Central purpose. Consequently the liability to provide a railway siding would be that of the Central Government and therefore the parties may approach the Government of India in the matter if they desire to enforce the commitments of the Baroda Government.

Sd/- J.R.Dhurandhar
14/9/
Remembrancer of Legal Affairs.

U.R. to B.D. No. 14692, dated the 15th September 1951.

OFFICE OF THE R.L.A.

The questions raised for the R.L.A's consideration are whether under the terms of the agreements of merger entered into by the Ex. rulers of Indian States with the Government of India, the rulers can claim exemption from the payment of the motor vehicles tax in respect of their motor cars and to what extent the buildings belonging to them hould be exemp from municipal or other local authorities taxation.

Article 4 of the agreement entered into by the Maharana of Lunawada with the Government of India provides that he shall be entitled to all personal privileges enjoyed by him whether within or outside the territories of the State immediately before the 15th day of August 1947. Paragraph (11) of the Memorandum on the personal privileges of the Rulers of the Merged and Integrated States that the Rulers may be permitted to have their cars registered and to take out driving licences without any payment. In all other respects they should conform to the rules and regulations under the Act, Para (12) provides that exemption from local taxation is primarily te concern of the Provincial and Union Governments. It is, however, hoped that, as far as possible, the practice prevailing before the 15th August 1947 will be continued. The Government of India desire that in the event of house-tax bei levied in or extended to the areas formerely constituting States, the main residential palaces of the Rulers should be exempt from this tax. Para 240 at page 125 of the White Paper on Indian States issued by the Government of India, Ministry of States, states:

> "Guaranteeds have been given to the Rulers under the various Agreements and Covenents for the continuance of their rights dignities and privileges. The rights enjoyed by the Rulers vary from State to State and are exercisable both within and without the States. They cover a variety of matters ranging from the use of red plates on cars to immunity from civil and criminal jurisdiction and exemption from customs duties, etc. Even in the past it was neither considered desirable nor practicable to drew up an exhaustive list of all these rights. During the negotiations following the introduction of the scheme embodied in the Government of India Act, 1935, the Crown Department had taken the position that no more could be donein respect of the rights and privileges enjoyed by the Rulers than a general

general assurance of the intention of the Government of India to continue them. Obviously, it would have been a source of perpetual regret if all these matters had been treated as justiciable."

From the orders issued by the Bombay Government it appears that the privilege of the Maharana of Lunawada for exemption from payment of the motor vehicles tax has been recognised to the limit of five motor cars and that exemption has been continued. It appears that within the State there was no limit of such privilege, that is to say, none of the motor cars of the Maharana were liable to payment of the motor vehicles tax. This privilege was enjoyed by the ruler on the ground that he was not liable to the State taxation. Consequently, the Maharana would be entitled to exemption from payment of the motor vehicles tax as a personal privilege in respect of cars used by him within the State. But so far as the use of the cars at places outside the State are concern the exmeption granted to the limit of five cars may continue.

2. As regards the taxation of municipalities and other local authorities is concerned as laid down by the Government of India, the exemption from such taxation in respect of house tax on residential palaces may continue,

Sd/- J.R.Dhurandhar.
7/10

Remembrancer of Legal Affeirs.

U.R. to P. &. S.D. No. 15965, dated the 8th October 1951.

There is no objection to grant the request made by Shri Dafle to give him time to make the payment. But such concession cannot be under protest. By his letter dated 11th May 1949 the Rajasaheb of Jath has renounced his claim to the lands in dispute. But in the list of his private property his claims to the nazarana amount has been recognised. There is, therefore, no objection to recover the amoun and to pay it to the Rajasaheb. The request made by Shri Dafle to pay the amount may be granted.

Sd/- J.R.Dhurandhar.
4/10

Remembrancer of Legal Affairs.

M.R. to F. & S.D. No. 15821, dated the 5th October 1951.

As the museum and the libraries have been recognised as the private property of the Ruler of Aundh and as the question of succession to the Gadi has not yet been decided the issue of the order and the press note and the execution of the proposed trust deed will have to be postponed.

2. As regards the payment to the staff, though as stated above it is premature to issue the press note, Government has already taken possession of the museum and the libraries; there would be no objection therefore to making the payment.

3. The action proposed in the Chief Secretary's note is in order.

Sd/- J.R. Dhurandhar.
17/10

Remembrancer of Legal Affairs.

U.R. to E.D. No. 16503. dated the 17th October 1951.

Office of the R.L.A.

The view taken by the Chief Secretary is correct.

2. In view of clause 7 of the Collateral letter the transfer of the land to Thakarani by the Thakore of Bhadarwa State on the 19th February 1948 will have to be considered as valid and cannot be challenged. "land" would include things attached to the earth or permanently fastened to anything attached to the earth. The Water-works and Power-house constructed on the land transferred to the Thakarani would be presumed to have been transferred with land. Besides, there is evidence t to prove that the power-house and the water-works were constructed by the Thakore from his own private funds as distinguished from the funds of the State. In these circumstances, the land together with the water-works and the power-house constructed thereon will have to be treated as the private property.

Sd/- J.R.Dhurandhar.
5-10

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 15908, dated the 6th October 1951.

Office of the R.L.A

Rule 16 of the Rules for the settlement of Ankadia villages provides that in the case of Thakrati and Ek-Ankadi villages Government shall have the right to levy a nominal cash Naxrana at the time of recognizing an adoption. There is no express provision in these Rules as to whether Government's permission to an adoption would be necessary. But rule 16 does imply powers of Government to recognize an adoption. This power to recognize an adoption includes power to refuse to recognize an adoption. Consequently, the view taken by the Collector that Government has a right to refuse to recognize an adoption is correct.

Rule 10(A)(1) provides that in the case of the death of the holder of an Ankadia village without leaving a male heir, the village shall not be continued in the name of the widow but shall be made khalsa. It is clear from this provision that the village can be made khalsa only if the last holder of the village dies without leaving a male heir. It is ture that in the present case the last holder of the Ankadia village left no male issue. But it is not clear whether there are any male heirs who can claim to succeed to the property of the deceased. In her application dated 23rd April 1951 Bai Huzuba, widow of the last holder, contends that there are near relatives. It is not clear from her application whether such near relatives are male heirs of the deceased. The Collector in his report at page 73 has stated that there is no male heir to the late Thakore. If this statement of the Collector is correct, there appears no legal objection to making the Ankadia village khalsa under Rule 10(A)(1).

Sd/- J.R.Dhurandhar.
4/10

Remembrancer of Legal Affairs.

U.R. to R.D. No. 15795 , dated the 5th October 1951.

Secretary, Public Works Department states that Barcda Government had given assurance of financial help and that the payment is relatable to an entry in the State list and the functions of the State. This view is not correct. The commitment relates to railways which is a Central subject and as already pointed out, it ought to be the liability of the Union Government. No reconsideration of R.L.A.'s opinion is necessary.

Sd.- J.R.Dhurandhar.
11-10

Remembrancer of Legal Affairs.

U.R. to D.D. No. 16137 , dated the 11th October , 1951.

Office of the R.L.A.

Under Article 265 of the Constitution, the tax shall be levied on collected except by authority of law. In view of this provision, neither the Shankarling Temple Committee nor the Fakir Swami Muth, is legally competent to levy octroi on the basis of the Sangli Government's Order dated the 16th May 1905 or on the basis of the Sanad granted by Raja of Sangli as no such order or sanad can now be considered an authority of law. It is not necessary that Government should cannel the Sangli Government's order dated the 16th May 1905 and the Sanad granted by the Raja of Sangli. The Shankerling Temple Committee and the Fakir Swami Muth Manager may be informed that they cannot legally levy any tax in view of Article 265 of the Constitution of India.

Sd/- J.R.Dhurandhar.
1-10

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 15638 , dated the 1st October 1951.

Office of the R.L.A.

It appears that in pursuance of the terms of compromise arrived at between the Thakore of the village Gajana and the Wanta Agriculturists in the appeal filed before the Giras Adhikari, the Thakore recovers a fee at the rate of Rs. 2/- and Re. 0-8-0 in respect of sale and mortgage respectively of wanta lands. The question raised for the R.L.A.'s consideration is whether this practice known as "Lagat" can be discontinued under the Bombay Haqqa Prohibition Act, 1893 (Bom. XX of 1893).

2. Under clause (d) of the Merger Agreement executed by the Thakore he is entitled to the full ownership, use and enjoyment of all other properties vesting in the including the superior proprietory rights in all lands in the estate and including the right to recover rent in cash or kind, according to law from tenants, subject, however, to the payment according to law, of land revenue to the Government of Bombay and to any tenancy laws that are in force or may hereafter be enacted by the Government of Bombay. The levy of Lagat is not included in the rent. Consequently, if this levy of Lagat fees is prohibited, the rights of the Thakore guaranteed under clause (d) of the merger agreement would in no way be infringed. The lagat-fees are in the nature of a tax which the Thakore would not be entitled to levy in any form. Consequently, it would be competent for Government to prohibit this levy under the Bombay Haqqa Prohibition Act, 1893, and the fact that this levy was agreed to by the cultivators in pursuance of an agreement in appeal filed before the Giras Adhikari would be no bar ~~xx~~ To Government exercising its powers under the Bombay Haqqa Prohibition Act. Government may, therefore, first issue an order abolishing the lagat-fees and then issue a notification prohibiting the Thakore from levying them.

3. Section 11 of the Bombay Tenancy and Agricultural Lands Act, 1948, has no application.

Sd/ J.R.Dhurandhar.
8-10

Remembrancer of Legal Affairs.

U.R. to R.D. No. 15999 dated the 8th October 1951.

S.C. 30/8